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NORRIS, MCLAUGHLIN & MARCUS			EXAMINER	
875 THIRD AVE			GODENSCHWAGER, PETER T	
18TH FLOOR				
NEW YORK, NY 10022			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,315

Applicant(s)

QUELLET ET AL.

Examiner

PETER F. GODENSCHWAGER

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's reply filed October 6, 2008 has been fully considered. Claims 3-7 and 10 are amended, claims 14-17 are new, and claims 1-17 are pending.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3 and 7-17 are rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657).

Regarding Claim 1: McManus et al. teaches a fragrance composition (Pg. 19, Ln 29) comprising water (Pg. 1, Ln. 11), a liquid crystal forming material (Pg. 1, Lns. 9-10) containing a fatty alcohol having 22 carbon atoms (behenyl alcohol), and a thickening agent (reinforcing material) (Pg. 12, Lns. 19-25, Pg. 15, Lns. 5-10).

Regarding Claim 2: McManus et al. further teaches adding as a reinforcing (thickening) material, an inorganic material (hydrated silica) (Pg. 16, Ln. 12).

Regarding Claim 6: McManus et al. further teaches that the reinforcing material (thickening agent) is magnesium trisilicate.

Regarding Claims 3 and 14-16: McManus et al. further teaches that reinforcing material (thickening agent) is gelatin (gelatine) (Pg. 16, Ln 11). McManus et al. additionally teach the composition comprising a non-ionic co-emulsifier (surfactant) (Pg. 9, Lns. 20-33) satisfying the

limitation of an amphiphilic reinforcing material as disclosed by Applicant on Pg. 4, Lns. 15-20 of Applicant's original specification. It is noted that while claims 14-16 further limit the species of gelatine and graft and block copolymers, such species are listed in the alternative in claim 3 and are thus not required components.

Regarding Claims 7 and 17: McManus et al. further teaches the liquid crystal-forming material comprising, in addition to a fatty alcohol having 22 carbon atoms (behenyl alcohol), a non-ionic co-emulsifier (surfactant) such as ethoxylated fatty esters (ethoxylated fatty alcohols) of 10 to 22 carbon atoms (Pg. 10, Lns 10-13 and Pg. 12, Lns. 29-30).

Regarding Claim 8: McManus et al. further teaches that the composition is a emulsion (dispersion) where the liquid crystal material is in the form of particles (vesicles) (Pg. 3, Ln. 32-Pg. 4, Ln.4).

Regarding Claim 9: McManus et al. teaches all the limitations of the composition of claim 1, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients.

Regarding Claim 10: McManus et al. teaches all the limitations of the composition of claim 1, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the

Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients.

Regarding Claim 11: McManus et al. teaches the all the limitations of the composition of claim 1, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients.

Regarding Claims 12 and 13: McManus et al. further teaches the composition as a skin moisturizing composition, (Pg. 1, Lns. 5-12) a personal care product commonly found in the house (household product).

Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657) when taken with Fowler et al. (US Pat. No. 5,534,265).

McManus et al. teaches the composition of claim 1 as set forth above. Furthermore, McManus et al. teaches that the reinforcing material (thickening agent) is one taught by Fowler et al. which is incorporated by reference in its entirety (Pg. 15, Lns 23-25). Fowler et al. teaches polyacrylamide co-polymers as reinforcing materials (thickening agents) (9:33-35).

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657) when taken with Peters et al. (US Pat. No. 4,643,898).

McManus et al. teaches the composition of claim 1 as set forth above. Furthermore, McManus et al. teaches the reinforcing material (thickening agent) is magnesium trisilicate (Pg. 16, Lns. 10-15), which is the product of a combination of sodium silicate and magnesium sulfate as evidenced by Peters et al. (3:15-30).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over McManus et al. (Intl. Pub. No. WO 01/78657) in view of Gerecht et al. (US Pat. No. 2,806,842).

McManus et al. teaches the composition of claim 1 as set forth above.

McManus et al. does not teach the composition comprising a hydrophobic reinforcing material (thickening agent) chosen from block and graft copolymers. However, Gerecht et al. teaches graft copolymers with hydrophobic backbones that are soluble in non-polar solvents (hydrophobic) (1:15-16, 64-70). McManus et al. and Gerecht et al. are combinable because they are concerned with the same field of endeavor, namely components useful as additives for lotions. At the time of the invention, a person of ordinary skill in the art would have found it obvious to use the graft copolymers of Gerecht et al. in the composition of McManus et al. and would have been motivated to do so because Gerecht et al. teaches that the graft copolymers would be useful as thickening agents in lotions (5:15-19).

Response to Arguments

Applicant's arguments filed October 6, 2008 have been fully considered but they are not persuasive.

Applicant argues that nowhere does McManus et al. (Intl. Pub. No. WO 01/78657) teach or suggest a fragrance composition comprising water, a fragrance material, a liquid crystal-forming material containing at least one fatty alcohol having at least 22 carbon atoms, and a reinforcing material. However, McManus et al. teaches such a composition as set forth in the rejection of claim 1 above.

Applicant argues that the instant invention is to a material whose sole function is the provision of fragrance, whereas McManus et al. is directed to making skin-moisturizing compositions. However, there are no limitations in the instant claims excluding compositions such as skin-moisturizing compositions which would inherently be able to impart a fragrance when used. Furthermore, the instant claims use the inclusive language "comprising" which allows for components other than those recited to be present.

Applicant argues that McManus et al. utilizes liquid crystal-forming materials for seeking to stabilize oil-in-water emulsions whereas Applicants are seeking to encapsulate fragrances. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that Applicants are seeking to encapsulate fragrances) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicants argue that McManus et al. discloses that fragrance is an optional ingredient. However, a reference must be considered for all that it discloses and must not be limited to preferred embodiments, and reference disclosing optional inclusion of a particular component teaches compositions that both do and do not contain that component (see MPEP 2123 I).

Applicants argue that the copolymers of polyacrylamides of Fowler et al. (US Pat. No. 5,534,265) are gelling agents and not reinforcing agents. However, Applicant discloses that hydrophilic organic reinforcing materials include copolymers containing poly(acrylamide) on Pg. 5, Lns. 15 of Applicant's original specification.

Applicants argue that the graft copolymers of Gerecht et al. (US Pat. No. 2,806,842) are gelling agents and not reinforcing agents. However, Applicant discloses that hydrophobic organic reinforcing materials include block- and graft copolymers on Pg. 5, Lns. 25-32 of Applicant's original specification.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER F. GODENSCHWAGER whose telephone number is (571)270-3302. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/
Supervisory Patent Examiner, Art Unit 1796

/P. F. G./
Examiner, Art Unit 1796
January 8, 2009